IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 256 of 2002

Anand Ramchandra Gosavi
r/o Sangrul, Taluka Karvir
District Kolhapur .Appellant
vs
The State of Maharashtra. .. Respondent

Mr B.G. Tangsali for the appellant-appointed

Mr D.R. More, Addl.P.P. for the respondent.

CORAM:V.G.PALSHIKAR,Acg.C.J. ,&
SMT. NISHITA MHATRE, J.
DATE: SEPTEMBER 11, 2006.

JUDGMENT:(Per Palshikar Acg.C.J.)

This appeal is directed against the order of conviction recorded by the Adhoc Additional Sessions Judge, Kolhapur in Sessions Case No. 114 of 2001 dated 9th October, 2001, sentencing the accused to suffer imprisonment for life.

1. With the assistance of the learned Additional Public Prosecutor and the learned advocate appointed for the appellant (by Court) we have scrutinised the record and reappreciated the evidence on record as was recorded by the learned trial judge. The prosecution case as it

emerges from the evidence on record stated briefly is that the accused Ananda and deceased Bebitai were married to each other. The accused was virtually dependent on the wife for his livelihood in all sense and yet he was abusive to her on small pretexts also. On 22nd February, 2001 at about 5 A.M. he (accused) went to the house of his mother in law i.e. mother of the deceased, woke her up and told her (Hirabai) that the accused killed his wife Bebitai and asked Hirabai to look after Poonam,, their daughter. From there the accused went to the house of Ramsing Rajput, leader of the village, member of the grampanchayat and told him that he (accused) killed Bebitai by a chopper. On this Ramsingh took the accused to the hut to verify his statement and then took him on his motor bicycle to the police station of Karvir police station and produced the accused before the police officer Gadkari. He filed the first information report narrating the extra judicial confession made by the accused. On the basis of this FIR investigation was conducted, the accused was arrested, his clothes were seized, panchanama was recorded and on completion of the investigation he was prosecuted.

2. The prosecution has examined as many as 11 witnesses to prove its case. The trial court accepted the evidence as led by the prosecution and came to the conclusion of guilt and consistent with this conclusion, sentenced the accused to suffer imprisonment for life as mentioned above. It is this order which is assailed in this appeal on the grounds mentioned in the memo of appeal as also canvassed before us verbally by the learned advocate appearing on behalf of the accused.

3. According to the learned advocate the extra judicial confessions are not trustworthy , the deposition of P.W. 7, who was a child witness at the relevant time is obviously tutored and, therefore, the evidence on record is not adequate to warrant conviction. These submissions were opposed by the Additional Public Prosecutor, who pointed out from the deposition of P.Ws 3 and 4 that the deposition of P.W.7, though a child witness, cannot be disbelieved as it finds corroboration in the testimony of P.W.4 Hirabai. The fact that the accused took Poonam to Hirabai after the assault is established. That exactly is what is stated by Poonam P.W. 7 in her testimony.

According to the prosecutor, therefore the order of conviction is proper and needs no interference.

4. P.W.1 is the panch witness who seized blood stained frock of Poonam and has proved the seizure. P.W. 2 Shrikant is also a panch witness who proved seizure of the clothes of the deceased which were stained with blood. P.W. 3 Ramsing is the complainant who lodged the first information report and who heard the accused saying that he (accused) killed his wife. The evidence of this witness is fully corroborated by the circumstances proved on record by the prosecution. Blood stained clothes of the accused were seized and the weapon of assault is identified by the witness. He had verified as to whether really killing took place and he found on visit of the spot that the confession given to him by the accused is truthful. He also, therefore, corroborates the testimony of P.W.4 to whom the accused confessed. Thus P.Ws 3 and 4 corroborate each other on the question of extra judicial confession. Their cross examination is also detailed and nothing is elucidated from them, which would require their testimony to be disbelieved.

5. P.W.5 is the doctor who proved that the death of Bebitai was homicidal in nature. P.W.6, Pandurang, who prepared the spot panchnama and his statement corroborates the statement made by P.W.4 in relation to the description of the spot. P.W. 7 is the child of the accused and the victim and she states that she saw the accused assaulting the victim. The fact that she was there is proved beyond doubt of seizure of the frock of Poonam, that she was taken to the house of P.W. 4 by the accused is also proved by the statement of P.W.4. The extra judicial confession given by the accused to P.Ws 3 and 4 thus stands duly corroborated by the testimony of P.Ws.3, 4 and 7. The recovery of chopper is also proved. Thus the prosecution has proved following:

(a) the death of Bebitai was homicidal.

(b) the injuries are explained by the doctor who conducted the post mortem and according to him all the injuries taken together were sufficient in the ordinary course to cause death.

© the accused was taken to the police and his blood stained clothes were seized by the police immediately.

(d) the accused had made extra judicial confession first to P.W.4 Hirabai his mother in law and after leaving Poonam with Hirabai and went to P.W.3 and Ramsingh and again confessed with him, the confession given by the accused is natural and is duly corroborated.

(e) the blood stained clothes of the accused were seized and the clothes are identified.

6. These circumstances are liable to be accepted as was done by the trial judge and if accepted they lead to the only conclusion that it was the accused who killed Bebitai. In our opinion, therefore, there is no reason to interfere in this appeal. The appeal, consequently is dismissed. The fees of the advocates for both sides are quantified at Rs.1500/-.